3842.

SUPREME COURT OF THE UNITED STATES.

No. 118.

WILLIAM EASBY, PLAINTIFF IN ERROR,

vs.

JOHN DOE, ON THE DEMISE OF RHODA E. HOMANS.

IN ERROR TO THE CIRCUIT COURT U. S., FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

INDEX.

	Original.	Print.
Copy appeal bond	1	1
Writ of error	3	1
Citation	4	2
Style of court	5	2
Parties	5	2
Nar	6	3
Rule plea	9	4
Defence on title, not guilty and issue	11	5
Jury	12	6
Verdict for plaintiff and judgment	12	6
Memorandum	13	7
Defendant's exceptions	14	7
Writ of error produced	17	8
Clerk's certificate and seal	17	9
Agreement of counsel	18	9

[GIDEON, Print.]

Copy—Appeal bond.

Know all men by these presents, that we, William Easby and Horatio N. Easby, are held and firmly bound unto Rhoda E. Homans, in the full and just sum of three hundred dollars, lawful money, to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals and dated this 26th day of May, eighteen hundred and fifty-three.

Whereas, lately at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit depending in the said court, wherein John Doe on the demise of Rhoda E. Homans was plaintiff, and William Easby was defendant, judgment was rendered against the said defendant; and he having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said John Doe on the demise of the said Rhoda E. Homans, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next:

Now the condition of the above obligation is such, that if the said William Easby shall prosecute his writ to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

WM. EASBY, [SEAL.]
H. N. EASBY. [SEAL.]

Signed, sealed and delivered in presence of—
CHAS. MCNAMEE.

Approved by the court, 27th May, 1853.
Test: JNO. A. SMITH, *Clerk*.

(Copy) Test: JNO. A. SMITH, *Clerk*.

THE UNITED STATES OF AMERICA.

The President of the United States, to the judges of the circuit court of the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you or some of you, between John Doe on the demise of Rhoda E. Homans, plaintiff, and William Easby, defendant, a manifest error hath happened to the great damage of the said defendant, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do

command you, if judgment be therein given, that under your hand distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and customs of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of said Supreme Court.

Issued this 27th day of May, 1853.

JNO. A. SMITH, *Clerk.*

Filed 27th May, 1853.

DISTRICT OF COLUMBIA, *to wit.*

The United States of America, to John Doe on the demise of Rhoda E. Homans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the District of Columbia for the county of Washington, wherein William Easby is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

27th May, 1853. JAS. S. MORSELL.

Service acknowledged, 27th May, '53.

W. REDIN.

Style of court.

DISTRICT OF COLUMBIA, *to wit.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-eighth day of the same month, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States the seventy-seventh.

Present, William Cranch, chief judge; the honorable James S. Morsell and James Dunlop, assistant judges; Richard Wallach, esq., marshal; John A. Smith, clerk.

Parties.

In the records of the proceedings of the said court, amongst others are the following, to wit:

JOHN DOE, on the demise of Rhoda Ellen Homans,
vs.
WILLIAM EASBY.

Be it remembered that heretofore, to wit, on the fourth day of March, in the year of our Lord one thousand eight hundred and fifty-two, John Doe, lessee of Rhoda Ellen Homans, by William Redin, esq., his attorney, declared in the circuit court here against Richard Roe, in a plea of trespass and ejectment, with a notice thereto annexed, in manner and form following, to wit:

Nar.

DISTRICT OF COLUMBIA,
Washington county, to wit.

Richard Roe, late of the county aforesaid, yeoman, was attached to answer unto John Doe of a plea wherefore, with force and arms, the said Richard Roe entered into that part of lot number four, in square number seven hundred and thirty, in the city of Washington; beginning for the same at a point on the line of A street south, at the distance of thirty-two feet from the northeast corner of said square; and running thence due west with the line of said street, fifty feet and five inches; thence due south, fifty feet; thence due east fifty feet and five inches; thence fifty feet to the place of beginning; and also into three messuages or tenements with the appurtenances situated thereon, in the county above named, which Rhoda Ellen Homans had demised to the said John Doe for a term which is not yet expired. And also wherefore, the said Richard Roe, with force and arms, &c., entered into that other part of the said lot, number four in the said square, being the westermost part of the said lot, measuring in front on A street south, eighteen feet, and in depth southwardly, fifty feet, part of the above; and also one other messuage or tenement with the appurtenances situate thereon, in the said county, which the said Rhoda Ellen Homans had demised to the said John Doe for a term which is not yet expired, and ejected him from his said several farms, and other wrongs to the said John Doe there did, to his great damage and against the peace and government of the United States. And thereupon, the said John Doe, by William Redin his attorney, complains that whereas the said Rhoda Ellen Homans, on the third day of November, in the year eighteen hundred and fifty-one, at the county aforesaid, had demised the said tenements with the appurtenances first above mentioned to the said John Doe, to have and to hold the same to him and his assigns, from the second day of the said month of November then last past, for and during, and unto the full end and term of twenty years from thence next ensuing, and fully to be complete and ended. And also, that whereas the said Rhoda Ellen Homans, on the said third day of November aforesaid, at the county aforesaid, had demised the said tenements secondly above mentioned, with the appurtenances, to the said John Doe, to have

and to hold the same to the said John Doe, and his assigns, from the said second day of November then last past, for and during, and unto the full end and term of twenty years thence next ensuing, and fully to be complete and ended. By virtue of which said several demises, the said John Doe entered into the said several tenements, first and secondly above mentioned, with the appurtenances, and became, and was thereof possessed for the said several terms so to him thereof respectively granted. And the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the fourth day of November, in the year aforesaid, at the county aforesaid, with force and arms, &c., entered into the said several tenements first and secondly above mentioned with the appurtenances, which the said Rhoda Ellen Homans had respectively demised to the said John Doe, in manner and for the several terms aforesaid, which are not yet expired, and ejected the said John Doe from his said several tenements and premises aforesaid, and other wrongs to him then and there did, to the great damage of the said John Doe, and against the peace and government of the United States; wherefore, the said John Doe saith he is injured and hath sustained damage to the value of one thousand dollars, and therefore he brings suit, &c.

W. REDIN, *for plaintiff.*

Mr. WILLIAM EASBY:

I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or some part thereof, and I being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear on the fourth Monday of this present month of March, in the circuit court of the District of Columbia, for the county of Washington, by some attorney of that court, and then and there cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

RICHARD ROE.

Rule plea.

Whereupon, the said lessee, by his attorney aforesaid, prays that the said Richard Roe, the defendant, the said William Easby, the tenant in possession of the premises aforesaid, or those under whom he claims, to this declaration aforesaid may appear. Thereupon, William Easby, the tenant in possession, comes here into court by John W. McKim, esq., his attorney; whereupon it is ruled by the court here, with the consent of the said John Doe, lessee as aforesaid, by his attorney aforesaid, and the said William Easby, (who claims the title in question,) by his attorney aforesaid, that the said William Easby be admitted defendant in the place of Richard Roe, the casual ejector; and at the trial thereon to be had, the said William Easby shall appear in his proper person, or by his attorney, and confess lease, entry and actual ouster, and ex-

pulsion of so much of the lands in the declaration of the said John Doe, lessee as aforesaid, as in the possession of the said William Easby, or his tenants, or of any other person claiming by or under his title; or in default thereof, that judgment be entered against the now defendant Richard Roe, the casual ejector; but that prosecution be stayed against him until he makes default in any of the premises. And it is further ruled by the court here, with consent of the counsel, that if, by reason of such default, the said John Doe, lessee as aforesaid, shall become non-suit at the trial, the said William Easby shall take no advantage thereof, but shall pay to the said John Doe, lessee as aforesaid, his costs, &c. And it is further ruled by the court here, that if, upon the trial of the said issue, a verdict shall be given for the said William Easby, or if the said John Doe, lessee as aforesaid, shall not prosecute his declaration upon any other cause than for the not confessing lease, entry and ouster as aforesaid, then the said Rhoda Ellen Homans, lessor of the aforesaid John Doe, shall pay costs, &c.

And thereupon, the said William Easby, by his attorney aforesaid, defends the force and injury, when, &c., and prays leave of the court here to imparle until the third Monday of October next, and then to answer to the declaration aforesaid of the said John Doe, lessee as aforesaid, in the plea aforesaid, and to him it is granted; the same day is given to the said plaintiff also.

October term, 1852.

At which said third Monday of October, in the year eighteen hundred and fifty-two, to which said day the said defendant had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, comes again into the circuit court here, as well the said plaintiff by his attorney aforesaid, as the said defendant by his attorney aforesaid.

Defence on title—not guilty, and issue joined.

And the said defendant by his attorney aforesaid, as before defends the force and injury, when and so forth, and takes his defence of and upon the premises in question upon his title thereto, and says that he is not guilty of the trespass and ejectment in the said declaration mentioned, in manner and form as the said John Doe, lessee as aforesaid, above complains, and of this he puts himself upon the country.

Venire facias to March term, 1853.

And the said John Doe, lessee as aforesaid, in like manner and so forth; therefore let a jury thereon appear before the court here on the fourth Monday of March next, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.; the same day is given to the parties then and there, and so forth.

And now at this day, to wit, the said fourth Monday of March, in the year eighteen hundred and fifty-three, comes again into the circuit

court here, as well the said John Doe, lessee as aforesaid, as the said William Easby, by their attorneys aforesaid; whereupon, for trying the issue aforesaid, it is ordered by the court here, that twelve persons from the panel of petit jurors returned to the court here by the marshal of the District of Columbia be called, who, being called, came, to wit:

Jury.

1. Henry H. McPherson,
2. Francis Mattingly,
3. Lewis Payne,
4. John Bittinger,
5. Francis A. Tucker,
6. Patrick H. Brooks,
7. John H. Trenholm,
8. Jacob A. Bender,
9. John Coburn,
10. Henry D. Cooper,
11. Samuel Pumphrey,
12. Richard Butt.

Who being duly empannelled and sworn to say the truth of and upon the premises aforesaid, upon their oath do say:

Verdict for plaintiff, and judgment.

That the said William Easby is guilty of the trespass and ejectment aforesaid, in manner and form as the said John Doe, lessee as aforesaid, within complains against him; and they assess the damages of the said John Doe, lessee as aforesaid, by occasion of the trespass and ejectment aforesaid, to the sum of one cent current money; therefore it is considered by the court here, that the said John Doe, lessee of the said Rhoda Ellen Homans, recover against William Easby his term aforesaid yet to come, of and in all that part of lot numbered four, in square numbered seven hundred and thirty in the city of Washington, beginning for the same at a point on the line of A street south, at the distance of thirty-two feet from the northeast corner of said square; and running thence due west with the line of said street fifty feet and five inches; thence due south fifty feet; thence due east fifty feet and five inches; and thence fifty feet to the place of beginning; and also three messuages or tenements with the appurtenances situate thereon; also that other part of lot four in said square, being the westermost part of said lot, measuring in front on A street south eighteen feet, and in depth southwardly fifty feet, part of the above; and also one other messuage or tenement situate thereon; and the said one cent current money, by the jury in form aforesaid assessed for his damages which he has sustained by occasion of the trespass and ejectment aforesaid.

Costs.

And also the sum of forty dollars and eighty-six cents by the court now here adjudged unto the said John Doe, lessee as aforesaid, for his costs and charges by him about his suit in this behalf laid out and expended; and the said William Easby, in mercy, &c.

Test: JNO. A. SMITH, *Clerk.*

Memorandum.

Memorandum.—Before the jurors aforesaid withdrew from the bar of the court here, the said William Easby, by his attorney aforesaid, filed in court here the following bill of exceptions:

Defendant's bill of exceptions.

JOHN DOE, demise of Rhoda E. Homans, vs. WILLIAM EASBY.

At the trial of the above cause, after the plaintiff's lessor had shown a legal title in herself, a devisee of D. Homans, who died in August, 1850, to the 50 ft. 5 in. of ground fronting on A street, by 50 feet deep, a part of lot 4, in square No. 730, in Washington city, with the houses thereon, being the premises described in the declaration; entitling her, as admitted prima facia, to recover the same as such devisee, and that the defendant held possession thereof at the commencement of this action. The defendent thereupon, to maintain the issue on his part, offered evidence of a tax title from the Corporation of the city of Washington, to sustain which, and to show that the requirements of the act of 26th May, 1824, had been complied with, proved the notice of the time and place of the tax sale to have been given by the city collector, by advertisement in the National Intelligencer, in the following words:

"COLLECTOR'S OFFICE, CITY HALL,
August 25th, 1848.

"On Wednesday, the 15th day of November next, the annexed list of property will be sold by public auction, at the City Hall in the city *Hall in the City* of Washington, to satisfy the corporation of said city for taxes due thereon as stated, unless the said taxes be previously paid to the collector, with such expenses and fees as may have accrued at the time of payment." And amongst other property so advertised was the following:

No. of Sqr.	No. of Lot.	Assessed to.	Taxes.	Total.
730.	Pt. 4, fronting 50 ft. 5 in. and improvement on A street, and 50 ft. deep, lying next to the eastern 32 ft. of said lot.	Dan'l Homans.	1845. 1846. 1847. 9.94, 9.94, 9.94.	$29 82

And the insertion of said advertisement was on the following days:

Saturday,	26th	August,	1848.
"	2d	September,	"
"	9th	"	"
Thursday,	14th	"	"
"	21st	"	"
Saturday,	30th	"	"
"	7th	October,	"
"	14th	"	"
"	21st	"	"
"	28th	"	"
Saturday,	4th	November,	"
"	11th	"	"
Wednesday,	15th	"	"

And that on such last day above mentioned, the said sale took place and the defendant became the purchaser of said premises for $55. Whereupon the plaintiff prayed the opinion and instruction of the court to the jury, "that the said sale was invalid and of no effect, and passed no title to the defendant in the premises in question; because a period of twelve full and complete weeks had not intervened between the 26th August, the time of the first advertised notice of said sale, and the 15th November, 1848, the day or time of said sale, but a period of 11 weeks and 4 days only;" which opinion and direction the court gave as prayed for by the plaintiff, to which opinion and direction of the court to the jury, the defendant by his counsel prayed leave to except, and that the court would sign and seal these his bill of exceptions, according to the form of the statute in such case made and provided, which is accordingly done this 17th day of May, 1853.

JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP, [SEAL.]

Test: JNO. A. SMITH, *Clerk.*

Writ of error produced.

And whereas, afterwards, to wit, on the twenty-seventh day of May, eighteen hundred and fifty-three, the said William Easby, by his attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the city of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of proceedings of the record of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, this 17th day of June, 1853.

[SEAL.]

JNO. A. SMITH, *Clerk*
Circuit court, Washington county, District of Columbia.

Agreement of counsel.

Supreme Court of the United States.

DOE, on demise of John Homans,
vs.
WILLIAM EASBY.

It is agreed that the value of the property in controversy in this case is over one thousand dollars, exclusive of costs and damages.

A. H. LAWRENCE,
Of counsel for plaintiff in error.
W. REDIN,
For defendant in error.